

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

CRIM. NO.: 5:23-CR-00021-FL-RN

UNITED STATES OF AMERICA        )  
  ) **MOTION TO STAY**  
v.    )  
  )  
CARLOS ALSTON                         )

The United States of America, by and through the undersigned Assistant United States Attorney for the Eastern District of North Carolina, respectfully requests this Court stay action in this case pending resolution of the government's interlocutory appeal. In support of this Motion, the government asserts the following:

1. On February 28, 2023, Defendant filed a Motion to Dismiss the pending Indictment, arguing that the statutes upon which the charges were brought violate the Second Amendment in light of *New York State Rifle and Pistol Assoc., Inc. v. Bruen*.
2. On October 24, 2023, the Court granted the Motion to Dismiss in part. The Court found 18 U.S.C. § 922(g)(3) unconstitutional and thus dismissed Count Two of the Indictment. The Court found 18 U.S.C. § 922(n) constitutional and denied Defendant's motion as to Count One.
3. On November 20, 2023, the government filed a Notice of Appeal indicating its intent to appeal this Court's dismissal of Count Two of the Indictment. Such appeal is authorized pursuant to 18 U.S.C. § 3731.
4. The government requests this Court stay proceedings on the single remaining Count of the Indictment. *See* Fed. R. App. P. 8(a).

5. “[A]n appeal from ... an interlocutory order made immediately appealable by statute divests a district court of authority to proceed with respect to any matter touching upon, or involved in, the appeal.” *United States v. Mala*, 7 F.3d 1058, 1061-62 (1st Cir. 1993). The government’s evidence for the dismissed Count Two is inextricably intertwined with its evidence for the remaining Count One and thus touches upon or involves matters currently under appeal.
6. If proceedings upon Count One are not stayed pending the government’s appeal, the Court may be required to try to case twice, which is not an efficient use of Court resources.
7. Counsel for the defendant has indicated that Defendant does not object to the requested stay of proceedings on Count One.
8. Further, pursuant to 18 U.S.C. § 3161(h)(1)(C), the delay resulting from the government’s interlocutory appeal should be excluded for purposes of calculating speedy trial.

WHEREFORE, the United States moves this Court to stay further proceedings in this matter pending the outcome of the pending interlocutory appeal. A proposed order is attached.

Respectfully submitted this 1<sup>st</sup> day of December, 2023.

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United States Attorney

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CERTIFICATE OF SERVICE

This certifies that a copy of this motion has, this 1<sup>st</sup> day of December, 2023,  
been served upon Counsel for the defendant via CM/ECF to:

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